App. F. IX-4

Previous References

1927. (courts)

File No. 268-27

Serial Nos. 1 - 2

Later References

PRESERVED

General and Revenue Secretariat.

Serial Nos. Two

Part B for June 1928

SUBJECT

Reciprocity between British India and Indian States as regards the recognition of foreign councils &c.

No Pol 1376 & 13.6.28

To the Foreign & Political Department

Resident

States that H.H. Govt are in full agreement with the resolution of the Chamber of Princes and that the Regn has already been amended in that direction by Regn V of 1925

M Gwynn
7/8/28

5 673/27 p827 CN 9/14

App. F. III—2]

General and Revenue Secretariat. | C6 File No. 26 of 1927

Serial No. 1

From

The Secy to the Resident
no. 4862 S 19.5.28.

Forwards a copy of letter 9.1.5.28 with enclosure from the Govt of India regarding reciprocity bet British India & Indian States as regards the recognition of previous Convictions & requests to be favoured with the views of the Govt in the matter.

1002/31/5

A printed copy of the file (Legis 15-22) relating to the amendment of Section 75 of the Cr.P.C in put up as ordered by the Secy in the P.H.D. Note.

M. 28/5. A draft reply to the Residency is also put up.

M 29/5

Secy/ 1st June

Draft approved 30/5.

M 29/5

Ans 5/6

S/6.

Now the draft issue?

M 5/6

Secy/

Yes 6/6

M 6/6

Per S. 75 Cr.P.C as amended by Legis IV of 1925 please see pp. 2.

M

1003/4/6.

NOTE—Contn. sheet

WD 0824—GP[illegible]—24-5-27

2 (2

App. F. III—2]

General and Revenue Secretariat.

Ch File No. 268 of 192 7

Serial No. 2

To the Secy to the Resident
No Pol 376 d/ 13.6.28
States that H H Govt are in full agreement with the resolution of the Chamber of Princes & that the Regn has already been amended in that direction by Regn V of 1925

B 2/11

NOTE—Contn. Sheet.

WD 21714—GPB—1-30,000—18-4-28.

All communications should be addressed to the Secretary to the Resident in Mysore, Bangalore, by designation, and not by name.

No. 4862 ENCLOS. 2
154B-1905

Dated Bangalore, 19 May 1928.

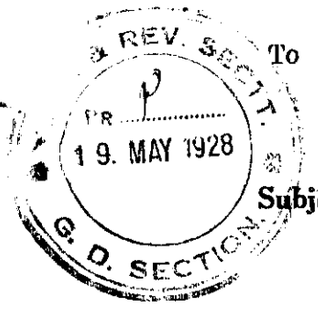
Pol: 1404

FROM

Major K. A. G. Evans Gordon,

SECRETARY TO THE RESIDENT IN MYSORE.

CA 268-27-1



To

The Secretary to the Government of
His Highness the Maharaja of Mysore,
Law Department.

Subject :—

Reciprocity between British India and Indian States as regards the recognition of previous convictions.

SIR,

I am directed to forward a copy of letter No.181-I/28, dated the 1st May 1928, and enclosure, from the Government of India in the Foreign and Political Department to local Governments and certain political officers, and to request that the Resident may kindly be favoured with the views of the Mysore Government on the above subject.

I have the honour to be,
Sir,
Your most obedient servant,

Captain.
for SECRETARY TO THE RESIDENT.

Letter No. 181-I/28, dated the 1st May 1928, from the Deputy Secretary to the Government of India in the Foreign and Political Department to Local Governments and Administrations.

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Reciprocity between British India and Indian States as regards the recognition of previous convictions.

I am directed to invite a reference to the letter from the Government of India in the Foreign Department No.3112-I.A., dated the 27th July 1906, in which you were informed of the abandonment of the proposal to undertake legislation to enable Courts in British India to recognise for the purposes of section 54 of the Indian Evidence Act, 1872, and section 75 of the Indian Penal Code, previous convictions by Courts established or continued by the authority of the Governor General in Council in the territories of any Indian State or Prince in India, and Courts of Indian States specially selected and notified by the Governor General in Council.

2. In 1903 it was represented to Lord Curzon's Government that habitual criminals from Indian States, who committed offences in adjoining British districts, could not always be adequately punished as the courts were unable to take into consideration, under section 75 of the Indian Penal Code, their previous convictions in Indian States. It was suggested that, as many Indian States possessed efficient courts and criminal identification bureau similar to those maintained in British India, the law should be amended to as to allow British courts to take cognizance of these convictions for the purposes of that section and of section 54 of the Indian Evidence Act, 1872 (I of 1872). Although this suggestion met with the almost unanimous approval of the local Governments and Administrations and of the political officers to whom it was referred, Lord Curzon's Government decided not to give effect to it because they were of opinion that, except in a few special cases, no practical difficulty had arisen and because they considered that the latitude which the existing law gave in the assessment of punishment afforded sufficient opportunity for awarding

awarding severer penalties in cases of second convictions.

3. In 1908 the question again came under the consideration of the Government of India. The necessity for a change in the law, with the object of enabling courts in British India to take cognizance of convictions in Indian States had been touched upon in the course of the enquiries of the Police Commission, who, however, refrained from making any recommendation on the point in the absence of evidence regarding the efficiency of the State tribunals. The Government of India had no doubt that such a change would greatly strengthen the hands of the judiciary and the police in the numerous areas adjoining Indian State territory, in dealing with habitual criminals belonging to Indian States who committed depredations in British India; but it was evident that the decision must mainly depend on the extent to which the Indian State Courts could be recognised as efficient. The question was not free from difficulty since although the tribunals of some of the more advanced States were not inferior to those of British India it would have been wholly unsafe to extend any general recognition. On the other hand there appeared to be grave objections to legislation which would empower the Governor General in Council to select certain courts in Indian States to whose decisions special weight should attach for the purpose of enhancing sentences in British India. The Government of India accordingly decided to restrict recognition to those courts or tribunals which had been established in an Indian State by the general or special authority of the Governor General in Council or of a local Government. His Majesty's Secretary of State for India who was addressed accordingly, in August 1909, conveyed his approval of the course proposed.

4. From the enclosed extract from the Proceedings of the Chamber of Princes it will be observed that the following Resolution moved by His Highness the Maharaja of Patiala on the 24th of February 1928 was carried unanimously:-

> "That for the purposes of section 75 of the Indian Penal Code previous convictions by courts of Indian States should be recognised by the Government of India on the clear understanding that Indian States would in their return

return recognise previous convictions by British Indian Courts".

It will also be seen that His Excellency the Viceroy pointed out to the Chamber that there were certain matters of administrative importance raised by the question, and that it would be necessary to consult local Governments and political officers.

5. I am now to request that the Government of India may be favoured with your opinion as to the advisability of undertaking legislation with a view to meeting the wishes of the Chamber.

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"C O P Y"

Extract from the Proceedings of the Chamber of Princes, 24th February 1928. (Proceedings of the 5th day).

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Agendum No. 13.

Resolution by His Highness the Maharaja of Patiala regarding reciprocity between British India and Indian States as regards the recognition of previous convictions awarded by the Courts of other States or of British India.

His Highness the Maharaja of Patiala: Your Excellency, Your Highnesses, I rise again to move another resolution on a subject which is closely connected with the administration of criminal justice. It runs thus:-

> "That for purposes of Section 75 of the Indian Penal Code, previous convictions by courts of Indian States should be recognised by the Government of India on the clear understanding that Indian States would in their turn recognise previous convictions by British Indian Courts".

The object of Section 75 of the Indian Penal Code is very plain and its necessity undisputed. It provides enhanced punishment for habitual offenders for certain classes of offences, i.e. offences against public coin and offences against property. A necessary ingredient of the evidence in such cases is the proving of previous convictions, but section 75, as at present constituted, takes into consideration only previous convictions by British Courts or those courts of the Indian States which are "acting under the general or special authority of the Governor-General in Council or of any Local Government". The object of the present resolution, therefore, is to delete the qualifying words "acting under the general or special authority of the Governor-General in Council or of any Local Government", and to place all Courts of the Indian States on the same level as the British Courts for purposes of recognizing convictions by such courts. The object of section 75 being merely to award deterrent sentences to habitual offenders, there is no reason why habitual offenders of the Indian States should be allowed to go unchecked in British India or conversely, habitual offenders in British India should go without adequate punishment in the Indian States.

Most of the Indian States have adopted the Indian Penal Code

with certain variations to suit local conditions; at any rate, all the main principles are enforced practically in all the States. The judicial machinery of the States has also undergone considerable improvement since the Indian Penal Code was enacted. The object of British Courts, as well as of the Courts in the Indian States, is to bring offenders to trial, and in the case of habitual offenders, to award deterrent sentences. There is reason, therefore, why they should not recognise previous convictions by other courts. At present lack of reciprocity in this matter leads to undesirable consequences. Habitual offenders residing in British territory, when tried in the States for offences under chapters 12 and 17 of the Indian Penal Code, get off with a comparatively lenient sentence, which is not commensurate with the gravity of the offences. Conversely, the habitual offenders of the Indian States very often migrate to British India to try new fields of activity and when brought to justice they do not get sentence adequate enough to act as a deterrent simply because British Courts do not take into consideration the convictions awarded by the State Courts.

I, therefore, propose for Your Highnesses' acceptance, that section 75 of the Penal Code be so amended so as to include all the Courts of the Indian States, at any rate, of all those States which are willing to recognise the convictions of British Courts.

His Highness the Maharaja of Panna: Your Excellency, Your Highnesses, in seconding this resolution I feel that there is very little that can be usefully added to the lucid exposition of the question which has been so ably placed before the House by Their Highnesses the mover and the seconder.

The purpose which Section 75 of the Penal Code is intended to serve is to afford adequate protection to Society from the dangers consequent upon the criminal propensities of habitual and hardened Law-breakers. The effect of the present restriction upon recognition of previous convictions is that half the benefit of this salutary provision of the law is lost alike to British India and to the Indian States. For, ours is a land of -

multiplicity

multplicity of jurisdictions, and when a criminal after one or two convictions, finds one centre too hot for him, the present state of the law supplies him with a profitable inducement to seek fresh fields and pastures across the border, one after another in succession, there to carry on his nefarious activities with comparatively less risk and greater comfort. The object of this resolution is to save society from this danger.

A further point is that Clause (b) of Section 75 results in practice in bringing about an anomalous situation. The said clause was added in the year 1910 for the purpose of providing for the recognition of convictions by Courts of places like the Berars, which though technically coming in the category of the Indian States were yet under the control of the Government of India. Courts of States under the temporary administration of Government are covered by this clause. Thus, whereas convictions by such Courts would be recognised in British India during the period of the temporary administration, they would cease to be so recognised as soon as the Ruler assumed charge of his State. Most of the Indian States have now adopted Codes of law which are identical with or similar to those of British India and their judiciary is manned by trained and competent officers. Civil decrees are already recognised wherever the States have expressed their willingness for reciprocity. There is no reason why criminal convictions should not be similarly dealt with. It will be beneficial both to British India and the Indian States. For these reasons I beg to second this resolution.

His Excellency the Viceroy: Your Highnesses, I may have one word to add before asking the Chamber to express its opinion. I fully appreciate the conditions of reciprocity in this matter that have been urged by those who have introduced and supported the resolution. At the same time Your Highnesses will be aware that there are some other matters of importance, administrative importance, raised by the question and I cannot say more on behalf of Government at this stage than that Government will consider it with every desire to meet the wish expressed in the resolution. If that meets with Your Highnesses' general approval we should

should propose to take steps to consult Local Governments and Political Officers and to invite any observations that they might have to make in regard to it. The question is that this Chamber recommends to the Viceroy that for purposes of section 75 of the Indian Penal Code previous convictions by Courts of Indian States should be recognised by the Government of India on the clear understanding that Indian States would in their turn recognise previous convictions by British Indian Courts.

Those in favour. (Hands raised).

Those against. (Nil).

Carried.

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"C O P Y"

Captain.

REGISTRAR, RESIDENT'S OFFICE.

A. P. F. VI. G1]

SUBJECT.....

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Diary No. of letter replied to.....

General and Revenue Secretariat

( )

the 192

Date of issue 13th June 1928.

Signed by Mr. B. Nagappa.

List of enclosures.....

Copied by .....

Examined by .....

Section C/5

File No. 268-27

Serial No. 2

Pol. No. 1376/Genl

To The Secretary

to the Hon'ble the Resident

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Sir,

I am directed to acknowledge the receipt of your office letter No. 4862 dated the 10th May 1928 and to state in reply that H.H.'s Govt are in full agreement with the resolution of the Chamber of Princes in regard to the need for reciprocity between British India and

over

WD0325—GPB—80,000—26-5-27

United States in the matter of recognition of previous convictions for the purpose of enhanced punishment of offenders. I am to add that in Mysore S-75 of the I.P.C. as it is in force here has already been amended in this direction by Regulation V of 1925. A copy of this Regulation is herein enclosed.

Have the honour to be
Sir
Your most obedient servant

75. Whoever, having been convicted, -

(a) by a Court in Mysore of an offence punishable under Chapter XII or Chapter XVII of this Code or of the Indian Penal Code as in force in British India or any other territory to which it may have been extended by the Governor-General in Council with imprisonment of either description for a term of three years or upwards, or

Enhanced punishment for certain offences.

(b) by a Court or tribunal in the territories of any native Prince or State in India acting under the general or special authority of the Governor-General in Council or of any local Government, of an offence which would, if committed in British India, have been punishable under those Chapters of this Code with like imprisonment for the like term,

shall be guilty of any offence punishable under either of those chapters with like imprisonment for the like term, shall be subject for every such subsequent offence to transportation for life, or to imprisonment of either description for a term which may extend to ten years.

× Added by Regulation V of 1925.